

Encouraging and Countenancing Torture and Cruel, Inhuman and Degrading Treatment

Our investigation has found that the Bush Administration has not only countenanced, but also paved the way, for torture, cruel, inhuman and degrading treatment, and other violations of international treaties. While additional violations of international treaties may well have occurred in Afghanistan and Guantanamo Bay, Cuba, our focus in this section will be on the violations that occurred in Iraq, to which this report is directed.

In April of 2004, the world was shocked when photos of torture and humiliation of Iraqi detainees in Abu Ghraib prison were leaked to the press. On May 6, President Bush stated that the “wrongdoers will be brought to justice,” and “that the actions of those folks in Iraq do not represent the values of the United States of America.”⁵⁵⁵ More than a year later, our investigation has found that the abuse was not the result of a “few bad apples,” as initially claimed, but that the responsibility lies within the highest levels of the Bush Administration.

Documented Instances of Torture and Other Legal Violations

Torture and Murder

Investigations conducted by the military; as well as international human rights organizations including Human Rights First, the International Committee of the Red Cross (ICRC), the ACLU, Amnesty International, and Human Rights Watch, and media organizations; have identified numerous detainee deaths, incidents of torture, and other abuses under international law in Iraq.

The “Taguba Report” was prepared by Maj. Gen. Antonio Taguba at the request of Lt. Gen. Ricardo S. Sanchez, the U.S. Commander of the Combined Joint Task Force in Iraq. The purpose was to investigate the conduct of the 800th Military Police Brigade, principally at the Abu Ghraib prison facility.⁵⁵⁷ Over the course of a month, General Taguba headed a team that reviewed reports of prior military investigations, witness statements by military police and military intelligence personnel, potential suspects, and detainees. Moreover, the Taguba investigation conducted its own

“I questioned some of the things that I saw . . . such things as leaving inmates in their cell with no clothes or in female underpants, handcuffing them to the door of their cell — and the answer I got was, ‘This is how military intelligence (MI) wants it done.’”

-----January, 2004, Sergeant Ivan L. Frederick II, soldier of the 372nd Military Police Company in a letter to family describing acts committed against Iraqi detainees at Abu Ghraib.⁵⁵⁶



interviews and collected additional evidence.⁵⁵⁸ In late February 2004, General Taguba issued his report, which documented numerous instances of torture and other unlawful conduct:

between October and December 2003, at the Abu Ghraib Confinement Facility (BCCF), numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees. This systemic and illegal abuse of detainees was intentionally perpetrated by several members of the military police guard force . . . of the Abu Ghraib Prison (BCCF). The allegations of abuse were substantiated by detailed witness statements . . . and the discovery of extremely graphic photographic evidence.⁵⁵⁹

The Taguba Report has confirmed that military and intelligence personnel and DOD contractors were responsible for “numerous incidents of sadistic, blatant, and wanton criminal abuses . . . inflicted on several detainees,” and that such abuses were “systemic,” “illegal,” and “intentionally perpetrated.”⁵⁶⁰ The Report details that intentional acts of abuse committed by military personnel include “punching, slapping and kicking detainees,”⁵⁶¹ rape, use of military dogs to intimidate detainees, and numerous other types of mistreatment.⁵⁶² There are detailed witness statements by numerous officers and soldiers within the 800th Brigade which substantiate these allegations.⁵⁶³ Moreover, these allegations have been confirmed by photographs and videos depicting the graphic images of abuse.⁵⁶⁴ It is important to note that Major General Taguba’s investigation delved into only one brigade at one prison in Iraq.



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Numerous international human rights groups have detailed even more serious abuses. Human Rights First has uncovered at least 16 detainee deaths in Iraq, including at least one at Abu Ghraib,⁵⁶⁵ that the military itself has found to be homicides.⁵⁶⁶ Many of those victims were found to have been tortured to death.⁵⁶⁷ While other deaths have not been directly linked to acts of torture, evidence that detainees died while bound and blindfolded⁵⁶⁸ increases the likelihood that these deaths were the direct result of detainee abuse. At least seven more deaths remain under investigation at the time of writing this Report, including a case where a marine broke the neck of a detainee, causing the detainee’s death.⁵⁶⁹ Moreover, Human Rights First has also found that a number of these deaths occurred after the abuses at Abu Ghraib became public.⁵⁷⁰

The ICRC also has made similar findings regarding the treatment of Iraqi detainees.⁵⁷¹ An ICRC report has concluded that acts of violence and degradation were used on a “systematic” basis and included:

- Extended time spent in stress positions
- Hanging of detainees by their arms for hours at a time
- Deprivation of sleep, food, water, clothing and light
- Sexual assault and humiliation of male and female detainees
- Threatening and simulating electrocution and murder
- Beatings and murder.⁵⁷²

The ACLU has used Freedom of Information Act requests to collect thousands of pages of internal documents, confirming the physical and sexual abuse of detainees and citizens by military personnel in Iraq and elsewhere.⁵⁷³ These internal documents reveal allegations of abuse against juveniles in Iraq, including one teenager whose jaw was broken as a result of an officer’s blow to the face.⁵⁷⁴ In another instance, military personnel electrically shocked a 16-18 year old prisoner on his feet and neck while he was in zipcuffs, hit him with a pistol, knocking him unconscious and leaving him to bleed.⁵⁷⁵ The internal documents also reveal that detainees were exercised to the point of extreme fatigue, which, in one instance, may have caused the death of an otherwise healthy detainee.⁵⁷⁶

Amnesty International has reported that acts of torture have not only occurred at detention sites but also continue to be perpetrated against Iraqis during house raids and arrests.⁵⁷⁷ They found:

- Hooding of suspects upon arrest.
- Striking of suspects with rifles.
- Soldiers taking aim on suspects with rifles.
- Injuring of suspects with severe blows by punching and kicking.⁵⁷⁸

Human Rights Watch confirmed with three officers that torture was a daily practice at the 82nd Airborne Division in Iraq.⁵⁷⁹ Detainees singled out for interrogation or retribution were reportedly viciously abused by army personnel.⁵⁸⁰ They were denied food and water, kept awake for days at a time, put in stress positions, or forced to do vigorous exercise until they lost consciousness. Their detention center, located only fifteen minutes from Abu Ghraib prison, became known amongst the locals for its abuse: “The “Murderous Maniacs” was what they called us at our camp because they knew if they got caught by us and got detained by us before they went to Abu Ghraib then it would be hell to pay.”⁵⁸¹

Human Rights Watch found that others were abused for apparently no reason at all. One officer recalled a cook who came into the detention area in a bad mood, seeking to work out his “frustration:” “One day a sergeant shows up and tells a [detainee] to grab a pole. He told him to bend over and broke the guy’s leg with a



mini Louisville Slugger that was a metal bat. He was the f***ing cook. He shouldn't be in with no [detainee]s.”⁵⁸² That officer continued, “Everyone in camp knew if you wanted to work out your frustration you show up at the PUC tent. In a way it was sport.”⁵⁸³

Newsweek chronicled the abuse witnessed by Army Specialist Anthony Lagouranis. He said abuse was part of the job, expected of soldiers in an effort to loosen up detainees and make them talk:

I think our policies *required* abuse . . . There were freaking horrible things people were doing. I saw [detainees] who had feet smashed with hammers. One detainee told me he had been forced by Marines to sit on an exhaust pipe, and he had a softball-sized blister to prove it. The stuff I did was mainly torture lite: sleep deprivation, isolation, stress positions, hypothermia. We used dogs.⁵⁸⁴

Time magazine recently uncovered that CIA interrogators tried to cover up the death of an Iraqi ghost detainee who died while being interrogated at Abu Ghraib prison.⁵⁸⁵ According to documents obtained by *Time*, the death of secret detainee Manadel al-Jamadi was ruled a homicide in the Defense Department autopsy, which states that after approximately 90 minutes of interrogation in the custody of CIA officials, he died of “blunt force injuries” and “asphyxiation.”⁵⁸⁶ Further evidence of this cover-up is demonstrated by documents obtained by *Time*, including many “photographs of his battered corpse -- iced to keep it from decomposing in order to hide the true circumstances of his dying . . .”⁵⁸⁷ *Time* reported that, as a result of al-Jamadi’s treatment, “Military Police at Iraq’s notorious Abu Ghraib prison dubbed him the Iceman; others used the nickname Mr. Frosty.”⁵⁸⁸



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The New York Times has reported on substantial evidence that torture and murder were used by CIA operatives in Iraq. An elite group of CIA operatives hunting insurgents in Iraq were “accused of abusing a number of prisoners between October 2003 and April 2004 by kicking them, punching them, twisting their testicles, breaking their fingers and pointing loaded guns at them.”⁵⁸⁹ This type of abuse even led to deaths. At least three Iraqis have died while in CIA custody.⁵⁹⁰

Cruel, Inhuman and Degrading Treatment

The ICRC has identified numerous incidents of cruel, inhuman, and degrading treatment (CID) in Iraq, which, while short of torture, has been found to be subject to the Geneva Conventions and the Convention Against Torture.⁵⁹¹

According to the February 2004 report of the ICRC, U.S. military intelligence abuse of Iraqi detainees during interrogation was widespread, harsh, brutal, and, in some cases, “tantamount to torture.”⁵⁹² The ICRC identified numerous other incidents of cruel treatment that can be confirmed by simply looking at the released photos and reports, including:

- “punching, slapping and kicking detainees[, and] jumping on their naked feet”;
- “videotaping and photographing naked male and female detainees”;
- “forcibly arranging detainees in various sexually explicit positions for photographing”;
- “forcing detainees to remove their clothing and keeping them naked for several days at a time”;
- “positioning a naked detainee on a . . . Box, with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture”;
- “placing a dog chain or strap around a naked detainee’s neck and having a female Soldier pose for a picture”;
- “a male MP [military police] guard having sex with a female detainee”;
- “using military working dogs (without muzzles) to intimidate and frighten detainees, and in at least one case biting and severely injuring a detainee”; and
- “taking photographs of dead Iraqi detainees.”⁵⁹³

Other Possible Violations of International Treaties

We have also identified practices designed to keep detainees hidden from the ICRC, namely detainees being moved around in Iraq in secret (known as “ghosting”) and individuals being transferred out of Iraq for interrogation. Both of these practices would violate the Geneva Conventions.⁵⁹⁴ We have learned about these practices from several sources. *The New York Times* confirmed in a report that the CIA “has secretly transport[ed] as many as a dozen detainees out of Iraq in the last six months [from April to October 2004].”⁵⁹⁵

Army General Paul Kern testified before the Senate Armed Services Committee in September of 2004 that the United States had held as many as 100 ghost detainees in Iraq.⁵⁹⁶ Maj. Gen. Kern even admitted to the Committee that the ghosting was intended to keep international monitors from having contact with the prisoners: “people . . . were



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brought into the facilities and . . . were moved so that they could not be identified by the International Red Cross.”⁵⁹⁷ He stated that because there was no record of how many there were, he could not definitely tell the Committee how many there were, but that the CIA maintained up to three dozen ghost detainees at the now infamous Abu Ghraib facility.⁵⁹⁸

Moreover, it appears from statements of Col. Thomas M. Pappas, head of military intelligence operations at Abu Ghraib, that ghosting was coordinated between military and CIA commanders on the ground.⁵⁹⁹ During his interview with investigators, Col. Pappas said that Col. Steven Boltz, then the second-ranking military intelligence officer in Iraq, approved the CIA’s use of Abu Ghraib prison to store “ghost detainees.”⁶⁰⁰ Pappas also told investigators he initially “‘had concerns over this arrangement’ and asked Col. Boltz if they were going to continue housing ghosts. ‘[Boltz] said yes, to facilitate [military intelligence’s] request.’”⁶⁰¹

Recent reports coming out of Iraq verify the use of a weapon called white phosphorus (WP) in combat. An Italian state broadcaster, *RAI*, recently reported that American forces used WP in Fallujah last year against insurgents.⁶⁰² According to a former American soldier who fought in Fallujah, “I heard the order to pay attention because they were going to use white phosphorus on Fallujah. In military jargon it’s known as Willy Pete. . . . Phosphorus burns bodies, in fact it melts the flesh all the way down to the bone . . . I saw the burned bodies of women and children. Phosphorus explodes and forms a cloud. Anyone within a radius of 150 metres is done for.”⁶⁰³

Use of WP as an incendiary weapon against civilians is banned by Protocol III of the 1980 Convention on Certain Conventional Weapons (CCW).⁶⁰⁴ Protocol III regulates the use of weapons designed to set fire to or burn their target. The protocol proscribes targeting civilians with incendiary weapons and restricts the use of air-delivered incendiary weapons against military targets in close proximity to concentrations of noncombatants.⁶⁰⁵ Protocol III only covers weapons created intentionally to set fire or burn, such as flamethrowers, and does not cover weapons that ignite fires or burn as a side effect. Because we have not signed Protocol III, the United States is theoretically not legally bound by the protocol’s provisions. Additionally, WP is not covered by the 1993 Chemical Weapons Convention (CWC), to which the United States is a party. This is because the CWC regulates weapons whose toxicity is specific to life processes, while WP is a general incendiary weapon.

However, grave breaches are also defined within the Geneva Conventions, as “willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health.”⁶⁰⁶ Thus, the use of WP in combat would appear to be illegal as it would fall within this definition of grave breaches under the Conventions, to which the United States is legally bound.



Bush Administration Responsibility for Torture and Other Legal Violations

Department of Justice

Failure to Adequately Prosecute Torture and Other Legal Violations by Contractors and Others Within its Jurisdiction

There appear to be numerous instances of torture that are capable of being punished within the jurisdiction of the Justice Department, which includes the authority under the Military Extraterritorial Jurisdiction Act to pursue criminal charges against military contractors, military personnel, and CIA officers.⁶⁰⁸ It is telling that only one such case has resulted in an official indictment, and no one has been convicted. In fact, according to Amnesty International, despite the numerous detainee deaths that occurred in Abu Ghraib as a result of torture and other legal violations, it appears that no member of the military has received a sentence of more than three years in prison.⁶⁰⁹

"In recent days, there has been a good deal of discussion about who bears responsibility for the terrible activities that took place at Abu Ghraib. These events occurred on my watch. As Secretary of Defense, I am accountable for them. I take full responsibility."

----- May 7, 2004, Secretary of Defense Donald Rumsfeld before the House Armed Services Committee⁶⁰⁷

According to a recent report by the *New York Times*, despite evidence of CIA involvement in the deaths of at least four prisoners in Iraq and Afghanistan, the Justice Department has charged only one person linked to the CIA with wrongdoing in any of the cases; that person, David A. Passaro, was a contractor, not an official CIA officer, though.⁶¹⁰ In a recent *New York Times* Op-Ed, Frank Rich asks, "why have the official reports on detainee abuse at Abu Ghraib and Guantanamo spared all but a single officer in the chain of command?"⁶¹¹ This failure to investigate has occurred under both former Attorney General John Ashcroft and current Attorney General Alberto Gonzales.

Human rights law expert Scott Horton surmised that not only had the Justice Department poorly executed its investigative duties, but that then-Attorney General Ashcroft had willfully disregarded his discretionary duty to prosecute.⁶¹² He also theorized that a failure to conduct meaningful investigation would continue in the future stating:

The Attorney General, John Ashcroft, and his immediate subordinates have . . . been complicit in a scheme for the commission of war crimes and accordingly will not undertake a criminal investigation. . . The Attorney General-designate, Alberto Gonzales, is a principal author of the scheme to undertake war crimes . . . [S]enior lawyers at DOJ, acting



with the knowledge and support of the Attorney General, were complicit in the scheme to introduce torture and other abusive practices into authorized regimes of treatment for detainees in GWOT. It is therefore clear that DOJ will not act on its responsibility to initiate criminal investigations or undertake prosecutions of the conspirators and implementers of this scheme.⁶¹³

Numerous rights groups have also expressed their outrage at the failure of the Justice Department to prosecute. They have rejected the military findings that only low-level officials were complicit in the abuses at Abu Ghraib and requested that the Justice Department investigate and prosecute higher officials.⁶¹⁴ In an open letter to Alberto Gonzales, the ACLU wrote:

There is an obvious public interest in investigating and prosecuting all persons committing torture or abuse or conspiring to commit those crimes against persons being held by the United States. A small number of enlisted men and women and a few low-ranking military officers should not be the only persons held responsible, if civilians and top military officers also engaged in wrongdoing.⁶¹⁵



Then-Attorney General-designate, "Alberto Gonzales, [was] a principal author of the scheme to undertake war crimes."

---- Scott Horton, Human rights law expert

Other rights groups, including Human Rights Watch and Amnesty International, have requested that Attorney General Gonzales "appoint a special prosecutor to investigate the roles of all U.S. officials 'who participated in, ordered, or had command responsibility for war crimes or torture.'"⁶¹⁶ These groups have since requested that Congress conduct an independent and bipartisan investigation because there is little promise that the Justice Department will conduct any meaningful inquiries.⁶¹⁷ Moreover, the failure of our

government to prosecute those responsible for acts of torture has led foreign nations to issue warrants for CIA operatives for their role in abductions and renditions.⁶¹⁸

Removal of Detainees from Iraq

We have clear evidence, by virtue of a March 19, 2004 memo from the Justice Department's Office of Legal Counsel (included in Exhibit D of this Report), that the Justice Department paved the way for the removal of detainees identified above.⁶¹⁹

The Justice Department memo undermined the Geneva Convention's prohibition against deportation and forcible removal by stating, "that there is no evidence that the [Geneva Convention's prohibition against deportation and forcible removal] extended to illegal aliens from occupied territory . . . and there is no evidence that international law has ever disapproved of such removals."⁶²⁰ The classified memo then concludes that there is an exception to the ban against forcible transfers and deportations of protected persons, surmising that protected persons, "whether illegal aliens or not,"⁶²¹ may be ". . . relocate[d] . . . from occupied Iraq to another country for a brief but not indefinite period, for the purposes of interrogation."⁶²² This memo was prepared at the request of then-White House Counsel Alberto Gonzales, as evidenced by the appearance of Gonzales' initials handwritten on the document,⁶²³ and presumably with the approval of then-Attorney General John Ashcroft.

There appears to be little doubt that this memo gave the CIA legal cover for removing both Iraqi citizens and foreigners found on Iraqi soil. **One intelligence official stated that "[t]he memo was a green light," and that "[t]he CIA used the memo to remove other people from Iraq."**⁶²⁴

Rights groups such as Human Rights First have closely linked the March 2004 memo with the practices of ghosting and rendition that have since become rampant in Iraq.⁶²⁵ In fact, Human Rights First used evidence of Gonzales' involvement with the memo to support its opposition to Alberto Gonzales's appointment as Attorney General.⁶²⁶ The group argues that: "The Goldsmith memo to Gonzales sheds light on [Gonzales'] involvement in the 'ghost detainee' program of secret detentions, described by Army Maj. Gen. Antonio Taguba in his report as 'deceptive, contrary to Army doctrine and in violation of international law.'⁶²⁷

Limited Construction of Torture and Applicability of CID

The Department of Justice also bears significant responsibility for the acts of torture and other legal violations by virtue of the extreme and narrow legal views it has adopted. These are set forth in an August 1, 2002 memo setting forth an inappropriately narrow definition of torture and in Mr. Gonzales's January 2005 confirmation hearing testimony on the jurisdictional reach of bans on CID.

An August 1, 2002 Department of Justice memo addressed to then-White House Counsel Gonzales creates a definition of torture that is contrary to international law, domestic law, and legislative intent.⁶²⁸ The memo claims that torture consists of "extreme acts" under U.S. law, inflicting severe pain that "must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure. According to the memo, severe mental pain requires suffering not just at the moment of infliction but it also requires lasting psychological harm, such as seen in mental disorders like posttraumatic [sic] stress disorder."⁶²⁹



However, 18 U.S.C. § 2340-2340A, the federal law executing the U.N. Convention Against Torture,⁶³⁰ does not use the word “extreme” or otherwise suggest the conclusion that “those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention.”⁶³¹ Instead, the law provides:

(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from - (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.”⁶³²

There is nothing in this definition that requires the sensation of either organ failure or death, or a level of mental harm rising to a disorder, to invoke the law's protections.

Mr. Gonzales has followed up this position on torture by taking the position at his confirmation hearing that the ban on Cruel, Inhuman and Degrading treatment only applies to detainees held within the United States.⁶³³ When the Senate approved the CAT, however, it did so with the reservation that cruel, inhuman and degrading treatment was limited by our jurisprudence of the Eighth Amendment of the constitution.⁶³⁴ It is therefore understood that the definition of CID treatment should be consistent with the definition of unconstitutionally “cruel” treatment under the Eighth Amendment.

However, Attorney General Gonzales has argued that the limitation was categorical and not definitional. He believes that only those individuals covered by the 8th Amendment would receive protection against cruel, inhuman or degrading treatment. If so, this means that all of those foreign nationals held overseas will be stripped of protection against CID.

Mr. Gonzales's argument has been rejected by numerous groups and scholars and has been refuted by countless groups outside of the Administration.⁶³⁵ For example, the following groups have publicly objected to this new and unfounded interpretation: Human Rights First, the American Civil Liberties Union, Amnesty

International, USA, Human Rights Watch and the Center for American Progress.⁶³⁶ Moreover, it has been rejected by Abraham D. Sofaer, the former legal adviser to the Department of State when the Reagan Administration originally signed the Convention Against Torture in 1988, who stated in a January 2005 letter to Sen. Patrick Leahy that, **“the purpose of the Senate’s [reservation] was to ensure that the same standards for [CID] would apply outside of the United States, as would apply inside.”**⁶³⁷ Approval of recent legislative initiatives by Senator McCain and others does not alter the harm done by these extreme legal positions.

Department of Defense and the Central Intelligence Agency

Personal Approval of Torture and Other Illegal Actions

In terms of Secretary Rumsfeld, first, he approved treatment in violation of the Geneva Conventions for individuals held in Guantanamo Bay, Cuba, and allowed these methods to be incorporated into the detention centers in Iraq. Second, he personally approved the ghosting and removal of Iraqi detainees.

We know about his approval of unlawful tactics because, according to a letter from William Haynes to Secretary Rumsfeld, on November 27, 2002, Mr. Rumsfeld signed the Haynes action memo, which requested approval of counter-resistance techniques, and actually asked for harsher techniques.⁶³⁸ These tactics were created for the express purpose of “enhancing [military] efforts to extract additional information” from detainees and included removal of detainee clothing, use of hoods and dogs.⁶³⁹ The most egregious of these tactics are collectively referred to as “Category III,” and include the “use of scenarios designed to convince the detainee that death or severely painful consequences for him and/or his family are imminent.”⁶⁴⁰ The memo notes that such a tactic could easily be construed as a death threat, which constitutes infliction of mental pain and suffering under the Torture Convention.⁶⁴¹ The memo also notes that another Category III tactic - use of a “wet towel and dripping water to induce the misperception of suffocation,”⁶⁴² could also be construed as a violation of the Torture Convention since it was likely to inflict mental harm.⁶⁴³



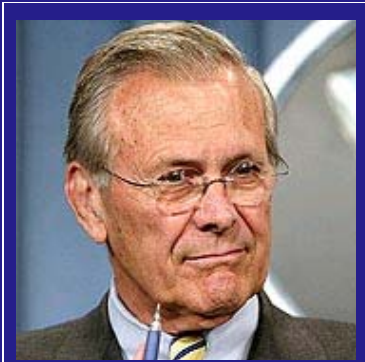
On November 27, 2002, Don Rumsfeld signed the action memo from Department of Defense General Counsel William Haynes, approving harsher interrogation techniques which were anticipated to be in violation of the Convention Against Torture.

We also know that Mr. Rumsfeld had to have appreciated that these tactics would migrate to Iraq because, when he sent Maj. Gen. Geoffrey D. Miller to Iraq in the summer of 2003, the Iraqi prisons were known to be crowded and a hotbed for violence; further, Iraqi detainees were not providing enough “actionable intelligence.”⁶⁴⁴ General Miller’s task was specifically to turn up the heat and, as one



officer explained, incorporate the Guantanamo practices into the facilities there.⁶⁴⁵ Brig. Gen. Janis L. Karpinski, head of the prison system in Iraq, stated, “[Miller] came up there and told me he was going to ‘Gitmoize’ the detention operation.”⁶⁴⁶

Further, Larry Wilkerson, former Chief of Staff to former Secretary of State Colin Powell, charged that a cabal of senior Administration officials issued directives that led to the abuse of prisoners by United States soldiers in Iraq and Afghanistan. “It was clear to me,” he said:



Don Rumsfeld was put on notice by the International Committee of the Red Cross that these techniques he was exporting to Iraq were considered to be “an intentional system of cruel, unusual and degrading treatment and a form of torture.”

that there was a visible audit trail from the vice president’s office through the secretary of defense down to the commanders in the field that in carefully couched terms – I’ll give you that – that to a soldier in the field meant two things: we’re not getting enough good intelligence and you need to get that evidence – and oh, by the way, here’s some ways you probably can get it.⁶⁴⁷

Moreover, we now know that Secretary Rumsfeld was put on notice by the International Committee of the Red Cross that these techniques he was exporting to Iraq were considered to be “an intentional system of cruel, unusual and degrading treatment and a form of torture.”⁶⁴⁸ These warnings began in 2003, soon after invasion, and were made to military leadership at least as high as Deputy Defense Secretary Paul Wolfowitz.⁶⁴⁹ Secretary Rumsfeld stated by his own admission before the House Armed Services Committee on May 7, 2004, “these events occurred on my watch. As Secretary of Defense, I am accountable for them. I take full responsibility.”⁶⁵⁰

Command Responsibility

There is substantial evidence that not only did Secretary Rumsfeld know the conditions for abuse being set and know abuse was taking place, but also that he did very little to prevent or punish the illegal activity. Specifically, it appears that Secretary Rumsfeld was well aware of or should have known the following:

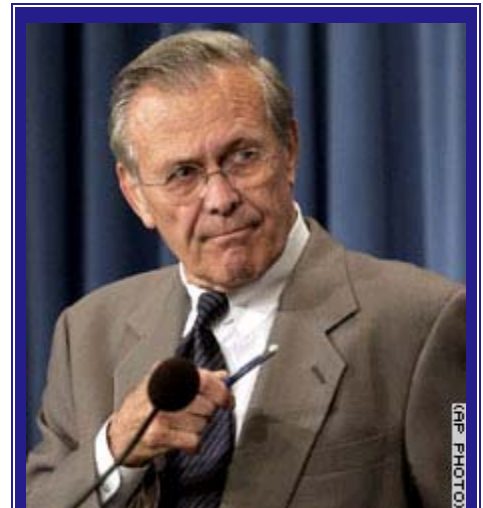
- That detainees in Iraq were being tortured, or treated in a cruel, inhuman and degrading way as the International Committee of the Red Cross reported over 250 allegations of abuse to military officials in 2003 alone,⁶⁵¹ that according to former Secretary of State Colin Powell, Secretary Rumsfeld personally kept the President “fully informed of the concerns that were being expressed” by the ICRC,⁶⁵² and that there were no less than 14 public accounts of detainee abuse after the spring of 2002 and before the *60 Minutes II* airing of the Abu Ghraib photos.⁶⁵³

- That, as confirmed by Army Gen. Paul Kern in testimony before the Senate Armed Services Committee, detainees were kept hidden from the International Committee of the Red Cross on numerous occasions and **“the number [of ghost detainees] is in the dozens, perhaps up to 100.”**⁶⁵⁴

Although it is clear by now that Secretary Rumsfeld either knew or should have known about the illegal practices at detention facilities in Iraq, the record shows that he refused to take serious measures either to prevent these acts from recurring or to investigate and punish those who already had mistreated detainees.

While a number of low-level individuals were punished, such a response appears to be insufficient in two important respects: the acts of torture have not been punished with the severity that is truly necessary to deter others from engaging in such conduct; and high-level officials who have encouraged or permitted the behavior in the first place have not been punished at all.

First, Human Rights First and Amnesty International estimate from publicly-available information that those who were actually punished were usually given no more than a slap on the wrist. A full 70 percent of those sanctioned by the military were given non-judicial, administrative punishments.⁶⁵⁵ The longest sentenced meted out for the death of a detainee was only three years.⁶⁵⁶ While we can confirm that there have been no less than 410 criminal investigations as of June 2005 – almost all including more than one offender and more than one victim – only 74 soldiers have been criminally charged.⁶⁵⁷



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Further, it appears that Secretary Rumsfeld has chosen not to investigate or to punish officials high in the chain of command. There has been nearly unanimous critique of the military investigations by groups advocating the abolition of torture and cruel treatment, such as Human Rights First, which notes that, “months after the Abu Ghraib photos were published – and nearly two years after the first abuse-related deaths in U.S. custody in the ‘war on terror’ – we are still not in a position to say that we know how to ensure that such abuses never happen again.”⁶⁵⁸ Amnesty International expresses similar critiques of the military investigations, explaining that “evidence of torture and other ill-treatment by US forces in the ‘war on terror’ continues to mount, but no US agents have been charged with war crimes or torture. Over 70 percent of official actions have resulted in non-judicial or administrative



punishments.”⁶⁵⁹ Amnesty International further noted that “the response by the US administration to the allegations [of torture] had been inadequate.”⁶⁶⁰

Ghosting and Removal of Detainees

We also have an admission that George Tenet specifically approved the ghosting in Iraq of a specific individual, and that Mr. Rumsfeld admitted to approving of ghosting of detainees as a special matter. During a press conference in June 2004, Secretary Rumsfeld confirmed not only that was he asked by CIA Director George Tenet to hide a specific detainee, but also that he hid the detainee and that the detainee was lost in the system for more than eight months:

Q: Mr. Secretary, I'd like to ask why last November you ordered the U.S. military to keep a suspected Ansar al-Islam prisoner in Iraq [Hiwa Abdul Rahman Rashul] secret from the Red Cross. He's now been secret for more than seven months. And there are other such shadowy prisoners in Iraq who are being kept secret from the Red Cross.

SEC. RUMSFELD: With respect to the -- I want to separate the two. Iraq, my understanding is that the investigations on that subject are going forward. With respect to the detainee you're talking about, I'm not an expert on this, but I was requested by the Director of Central Intelligence to take custody of an Iraqi national who was believed to be a high-ranking member of Ansar al-Islam. And we did so. We were asked to not immediately register the individual. And we did that. It would -- it was -- he was brought to the attention of the Department, the senior level of the Department I think late last month. And we're in the process of registering him with the ICRC at the present time . . .⁶⁶¹



Secretary Rumsfeld testified that CIA Director George Tenet personally asked him to keep a particular prisoner off the rolls and to hid him from the International Committee of the Red Cross.

The CIA transferred Mr. Rashul to an undisclosed location outside Iraq to be interrogated.⁶⁶² Three months after Mr. Rashul's detention, the CIA's General Counsel determined that transferring him out of Iraq violated the Geneva Conventions.⁶⁶³ Upon transferring Mr. Rashul from CIA custody to the US military, Director Tenet asked that the detention be kept secret, meaning that military should “not immediately register” Mr. Rashul in any military database.⁶⁶⁴ Secretary Rumsfeld complied, issuing a classified order that the media have reported as stating: “Notification of the presence and or status of the detainee to the International Committee of the Red Cross, or any international or national aid organization, is prohibited pending further guidance.”⁶⁶⁵ Secretary Rumsfeld's order was then transmitted down the chain of command to Lieutenant General Ricardo Sanchez, commander of US forces in Iraq.

General Sanchez then issued his own order to implement Secretary Rumsfeld's order. A media report on the Sanchez order describes that it "accepts custody and detains Hiwa Abdul Rahman Rashul, a high-ranking Ansar al-Islam member;" orders that he "remain segregated and isolated from the remainder of the detainee population;" "[o]nly military personnel and debriefers will have access to the detainee. . . . Knowledge of the presence of this detainee will be strictly limited on a need-to-know basis." "Any reports from interrogations or debriefings will contain only the minimum [sic] amount of source information . . .".⁶⁶⁶

Mr. Rashul was detained at Camp Cropper, outside Baghdad Airport, where he reportedly received only one cursory interrogation when he first arrived.⁶⁶⁷ The CIA is reported to have made little effort to follow up and, when it did inquire about him in January 2004, prison officials were unable to locate him.⁶⁶⁸ In addition to this, several prison officials questioned superiors to determine what to do about Rashul's given his indeterminate detention, but received no official answers.⁶⁶⁹

After media reports began circulating in June 2004 as to the existence of an unregistered detainee, Mr. Rashul was finally registered. This occurred more than eight months after he was turned over to the military and almost a year after his initial capture and detention.⁶⁷⁰

Further, in his statement to investigators, Col. Thomas M. Pappas, the top military intelligence officer at Abu Ghraib, stated that in September 2003, the CIA requested that the military intelligence officials "continue to make cells available for their detainees and that they not have to go through the normal in processing procedures."⁶⁷¹ And, as Army General Paul Kern testified before the Senate Armed Services Committee in September of 2004, the U.S. had held as many as 100 ghost detainees in Iraq.⁶⁷²

In addition, Secretary Rumsfeld confirmed that the ghosting of detainees occurred on his watch on many occasions:

Q: But then why wasn't the -- why wasn't the Red Cross told, and there are other such prisoners being detained without the knowledge of the Red Cross?

SEC. RUMSFELD: There are -- there are instances where that occurs. And a request was made to do that, and we did.⁶⁷³



⁵⁵⁵President George W. Bush, Remarks with His Majesty King Abdullah II of the Hashemite Kingdom of Jordan (May 6, 2004) *available at* <http://www.whitehouse.gov/news/releases/2004/05/20040506-9.html>.

⁵⁵⁶Seymour Hersh, *Torture at Abu Ghraib*, THE NEW YORKER, May 10, 2004, at 42 (emphasis added).

⁵⁵⁷ARTICLE 15-6 INVESTIGATION OF THE 800th MILITARY POLICE BRIGADE, *available at* <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>. [hereinafter “Taguba Report”] (conducted by Maj. Gen. Antonio M. Taguba, Deputy Commanding General Support, Coalition Forces Land Component Command).

⁵⁵⁸MAJ. GEN. ANTONIO M. TAGUBA, DEPUTY COMMANDING GENERAL SUPPORT, COALITION FORCES LAND COMPONENT COMMAND, ARTICLE 15-6 INVESTIGATION OF THE 800TH MILITARY POLICE BRIGADE (2004), *available at* http://www.npr.org/iraq/2004/prison_abuse_report.pdf [hereinafter “Taguba Report”]. The report was not meant for public release, but – even though portions of it were classified – it was leaked and became widely available by May 2004 on the Internet. In addition, English translations of statements by several of the abused detainees were also leaked to the public. *See, e.g.*, Translation of Sworn Statement Provided by ___, Detainee # ___ (Jan. 21, 2004), *at* <http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/swornstatements042104.html> (the name of the detainee was withheld for privacy reasons) (describing, among other things, an act of sodomy by military police using a nightstick). *Id.*

⁵⁵⁹Taguba Report at 16 (emphasis added).

⁵⁶⁰*Id.*

⁵⁶¹*Id.*

⁵⁶²*Id.* at 16-17.

⁵⁶³*Id.* at 18-19.

⁵⁶⁴*Id.* at 16.

⁵⁶⁵HUMAN RIGHTS FIRST, ONE YEAR AFTER ABU GHRAIB: TORTURE PHOTOS: US GOVERNMENT RESPONSE GROSSLY INADEQUATE, *available at* http://www.humanrightsfirst.org/us_law/etn/statements/abu-yr-042605.htm#_ednref1.

⁵⁶⁶Press Release, Human Rights First, Twenty-Seven Detainee Homicides in U.S. Custody, (Oct. 19, 2005), *available at* http://www.humanrightsfirst.org/media/2005_alerts/etn_1019_dic.htm.

⁵⁶⁷*Id.*

⁵⁶⁸*Id.*

⁵⁶⁹*Id.*

⁵⁷⁰*Id.*

⁵⁷¹REPORT OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) ON THE TREATMENT BY THE COALITION FORCES OF PRISONERS OF WAR AND OTHER PROTECTED PERSONS BY THE GENEVA CONVENTIONS IN IRAQ DURING ARREST, INTERNMENT AND INTERROGATION (Feb. 2004), *available at* <http://www.stopwar.org.uk/Resources/icrc.pdf>



[hereinafter ICRC Report].

⁵⁷² *Id.*

⁵⁷³ ACLU, *Government Documents on Torture* (last modified Oct. 24, 2005), available at <http://www.aclu.org/torturefoia/> (last modified Oct. 24, 2005).

⁵⁷⁴ *Id.* http://www.aclu.org/torturefoia/released/032505/1181_1280.pdf

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ Amnesty International, *One Year After Abu Ghraib, Torture Continues*, Apr. 28, 2005, available at <http://web.amnesty.org/pages/irq-280405-feature-eng>.

⁵⁷⁸ Amnesty International Report, *United States of America: Human Dignity Denied Torture and Accountability in the 'War on Terror,'* available at <http://web.amnesty.org/library/Index/ENGAMR511452004>.

⁵⁷⁹ HUMAN RIGHTS WATCH, LEADERSHIP FAILURE: FIRSTHAND ACCOUNTS OF TORTURE OF IRAQI DETAINEES BY THE U.S. ARMY'S 82ND AIRBORNE DIVISION, VOL. 17, No. 3(G) (Sept. 2005), available at <http://hrw.org/reports/2005/us0905/us0905.pdf>.

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.* at 9.

⁵⁸² *Id.* at 11-12.

⁵⁸³ *Id.* at 1.

⁵⁸⁴ Michael Hirsh, *The Truth About Torture*, NEWSWEEK, Nov. 7, 2005 (emphasis added).

⁵⁸⁵ Adam Zagorin, *Haunted by 'The Iceman'*, TIME, Nov. 21, 2005, at 38.

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.*

⁵⁸⁹ Scott Shane, *The Reach of War: Detainees*, N.Y. TIMES, Oct. 29, 2004 at A10.

⁵⁹⁰ John Hendren, *The Conflict in Iraq: CIA May Have Held 100 'Ghost' Prisoners*, L.A. TIMES, Sept. 10, 2004 at A1.

⁵⁹¹ ICRC Report (documenting the practice of keeping prisoners "completely naked in totally empty concrete cells and in total darkness, allegedly for several days at a time"). *Id.* at 12.

⁵⁹² *Id.* at 3; see also Scott Wilson, *Ex-Detainee Tells of Anguishing Treatment at Iraq Prison*, WASH. POST, May 5, 2004, at A18 ("the men were made to masturbate against a wall, crawl on top of one another to



form a pyramid and ride each other ‘as if we were riding a donkey.’”); *Iraqi Inmate: “Treated like Dogs,”* BBC NEWS ONLINE, May 6, 2004, *available at* <http://news.bbc.co.uk/1/hi/world/americas/3689371.stm> (“They cut our clothes off with blades.”). *Id.*

⁵⁹³Taguba Report at 17.

⁵⁹⁴Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, [*hereinafter* “GC III”]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287, [*hereinafter* “GC IV”], (*entered into force* Oct. 21, 1950). The U.S. and Iraq are both parties to the Conventions.

⁵⁹⁵Dana Priest, *Memo Lets CIA Take Detainees Out of Iraq; Practice Is Called Serious Breach of Geneva Conventions*, WASHINGTON POST, October 24, 2004 at A01 (citing an unnamed DOJ official who provided the classified memorandum during an interview); *see also* Douglas Jehl, *U.S. Action Bars Rights of Some Captured In Iraq*, N.Y. TIMES, October 26, 2004 at A1.

⁵⁹⁶*Testimony on the Investigation of the 205th Military Intelligence Brigade at Abu Ghraib Prison, Iraq Before the Senate Armed Services Committee*, 108th Cong. (2004) (statement of Army Commanding Gen. Paul Kern).

⁵⁹⁷*Id.*

⁵⁹⁸*Id.*

⁵⁹⁹Josh White, *Army Documents Shed Light on CIA ‘Ghosting,’* WASH. POST., Mar. 24, 2005, at A15.

⁶⁰⁰*Id.*

⁶⁰¹*Id.*; *see also* R. Jeffrey Smith, *Abu Ghraib Officer Gets Reprimand; Non-Court-Martial Punishment for Dereliction of Duty Includes Fine*, WASH. POST, May. 12, 2005, at A16.

⁶⁰²Peter Popham, *US Forces ‘Used Chemical Weapons’ During Assault on City of Fallujah*, THE INDEPENDENT, November 8, 2005.

⁶⁰³*Id.*

⁶⁰⁴Protocol III of the 1980 Convention on Certain Conventional Weapons (CCW) *available at* http://www.globalsecurity.org/military/library/policy/int/convention_conventional-wpns_prot-iii.htm. The operative provisions of the CCW are contained in five protocols, four of which are currently in force.

⁶⁰⁵*Id.*

⁶⁰⁶GC III, art. 130.

⁶⁰⁷*Testimony on treatment of Iraqi Prisoners: Hearing before the H. Comm. on Armed Services*, 108th Cong. 2d Sess. (2004) (Statement of Secretary of Defense Rumsfeld).

⁶⁰⁸18 U.S.C. §§ 3161-3167 (2002).

⁶⁰⁹AMNESTY INTERNATIONAL, *ABU GHRAIB: ONE YEAR LATER, WHO’S ACCOUNTABLE?* *at* <http://www.amnestyusa.org/stoptorture/agfactsheet.html>.



⁶¹⁰Douglas Jehl and Tim Golden, *C.I.A. is Likely to Avoid Charges in Most Prisoner Deaths*, N.Y. TIMES, Oct. 23, 2005, at 6.

⁶¹¹Frank Rich, *One Step Closer to the Big Enchilada*, N.Y. TIMES, Oct. 30, 2005, at 12.

⁶¹²Scott Horton, *Betr: Strafanzeige gegen den US-Verteidigungsminister Donald Rumsfeld, u.a. Expert Report of Scott Horton*, Jan. 28, 2005, at 2, available at http://www.ccr-ny.org/v2/legal/september_11th/docs/ScottHortonGermany013105.pdf

⁶¹³*Id.* at 3 (emphasis added).

⁶¹⁴Josh White, *Rights Groups Reject Prison Abuse Findings*, WASH. POST, Apr. 24, 2005 at A20.

⁶¹⁵Letter from Anthony Romero, Executive Director, ACLU, to Alberto Gonzales, Attorney General, United States Department of Justice (Mar. 30, 2005), available at <http://www.aclu.org/safefree/general/17554leg20050330.html> (emphasis added).

⁶¹⁶Josh White, *Rights Groups Reject Prison Abuse Findings*, WASH. POST, Apr. 24, 2005 at A20.

⁶¹⁷*Id.*

⁶¹⁸*Italy Orders Further CIA Warrants*, BBC NEWS, available at <http://news.bbc.co.uk/2/hi/europe/4297966.stm>. (Reporting a total of 22 warrants issued for those found involved in the abduction of Osama Mustafa Hassan on Italian soil and his rendition to Egypt for interrogation).

⁶¹⁹Memorandum from Jack Goldsmith, Assistant Attorney General, Office of Legal Counsel to William H. Taft IV, General Counsel, Department of State (March 19, 2004), available at http://www.humanrightsfirst.com/us_law/etn/gonzales/memos_dir/memo_20040319_Golds_Gonz.pdf

⁶²⁰See *id.* at 5; see also GCIV, art. 49.

⁶²¹Memorandum from Jack Goldsmith, Assistant Attorney General, Office of Legal Counsel to William H. Taft IV, General Counsel, Department of State at 15. (March 19, 2004), available at http://www.humanrightsfirst.com/us_law/etn/gonzales/memos_dir/memo_20040319_Golds_Gonz.pdf (emphasis added).

⁶²²*Id.* at 15.

⁶²³*Id.*

⁶²⁴Dana Priest, *Memo Lets CIA Take Detainees Out of Iraq*, WASH. POST, Oct. 24, 2004 at A1 (emphasis added).

⁶²⁵Human Rights First, *Human Rights First Opposes Alberto Gonzales To Be Attorney General*, Jan 24, 2005, available at http://www.humanrightsfirst.org/us_law/etn/gonzales/statements/hrf_opp_gonz_full_012405.asp.

⁶²⁶*Id.*

⁶²⁷*Id.*



⁶²⁸Memorandum from Jay Bybee, Assistant Attorney General to Alberto Gonzales, Counsel to the President (Aug. 1, 2002), *available at* <http://news.findlaw.com/hdocs/docs/doj/bybee80102ltr.html>. *See also*, Evan Thomas and Michael Hirsh, *The Debate Over Torture*, NEWSWEEK, Nov. 21, 2005 at 30.

⁶²⁹Memorandum from Jay Bybee, at 2 (emphasis added).

⁶³⁰United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984).

⁶³¹Memorandum from Jay Bybee, at 1.

⁶³²18 U.S.C. § 2340A (2002).

⁶³³David Luban, *The False Premise of the Interrogation Debate*, WASH. POST, Nov. 27, 2005 at B1.

⁶³⁴S. Doc. No. 101-30, at 36(1990), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Aug. 30, 1990.

⁶³⁵*See* David Luban, *The False Premise of the Interrogation Debate*, WASH. POST, Nov. 27, 2005 at B1.

⁶³⁶*See* Josh White, *Rights Groups Reject Prison Abuse Findings*, WASH. POST., Apr. 24, 2005 at A20.

⁶³⁷Letter from Abraham D. Sofaer, Hoover Institution on War Revolution and Peace to the Hon. Patrick J. Leahy, Ranking Member, Senate Judiciary Committee (Jan. 21, 2005) (on file with author) (emphasis added).

⁶³⁸Memorandum from William J. Haynes, II, General Counsel, to Donald Rumsfeld, Secretary of Defense (Nov. 27, 2002), *available at* <http://www.dod.gov/news/Jun2004/d20040622doc5.pdf>.

⁶³⁹Memorandum from Michael B. Dunlavey, Major General, to Commander U.S. South Command (Oct. 11, 2002) at 1, 4, *available at* <http://news.findlaw.com/hdocs/docs/dod/dunlavey101102mem.pdf>.

⁶⁴⁰*Id.* at 4 (emphasis added).

⁶⁴¹*Id.* at 5 (emphasis added).

⁶⁴²*Id.* at 4 (emphasis added).

⁶⁴³*Id.* at 5 (emphasis added). In fact, the ultimate list contained many tactics barred by then-current army doctrine. As one former military prosecutor himself said, many of these are “patent violations of the laws of war” and still others could become so if applied in a strict enough manner. Jordan J. Paust, *Executive Plans And Authorization to Violation International Law Concerning Treatment and Interrogation of Detainees*, 43 COLUM. J. OF TRANSNAT’L L. 811, 845 (2005).

Human Rights Watch terms these tactics as an “unprecedented expansion of army doctrine” and that, “depending on how they are used, these methods also likely violate the Geneva Conventions’ prohibition on torture or inhuman treatment of prisoners” and “would thus constitute a war crime.” HUMAN RIGHTS WATCH, *GETTING AWAY WITH TORTURE: COMMAND RESPONSIBILITY FOR THE U.S. ABUSE OF DETAINEES*, Apr. 2005 at 33.

⁶⁴⁴Taguba Report at 7. The report was not meant for public release, but – even though portions of it were classified – it was leaked and became widely available by May 2004 on the Internet. In addition, English translations of statements by several of the abused detainees were also leaked to the public.



See, e.g., Translation of Sworn Statement Provided by ___, Detainee # ___ (Jan. 21, 2004), at <<http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/swornstatements042104.html>> (the name of the detainee was withheld for privacy reasons) (describing, among other things, an act of sodomy by military police using a nightstick).

⁶⁴⁵ John Barry, Michael Hirsh and Michael Isikoff, *The Roots of Torture*, NEWSWEEK, May 24, 2004. See, Secretary of Defense Donald H. Rumsfeld, Memorandum for the Commander, US Southern Command, on Counter-Resistance Techniques in the War on Terrorism, Tab A, at 1-2 (Apr. 16, 2003), at <<http://www.washingtonpost.com/wp-srv/nation/documents/041603rumsfeld.pdf>>; see also Dana Priest & Bradley Graham, *Guantanamo List Details Approved Interrogation Methods*, WASH. POST, June 10, 2004, at A13; Neil A. Lewis & Eric Schmitt, *Lawyers Decided Bans on Torture Didn't Bind Bush*, N.Y. TIMES, June 8, 2004, at A1.

On April 16, 2003, Secretary Rumsfeld approved twenty-four interrogation techniques (out of thirty-five examined by the working group) for use at Guantanamo Bay, including “significantly increasing the fear level in a detainee” and “attacking or insulting the ego of a detainee, not beyond the limits that would apply to a POW.” *Id.*

⁶⁴⁶ Scott Wilson and Sewell Chan, *As Insurgency Grew, So Did Prison Abuse; Needing Intelligence, U.S. Pressed Detainees*, WASH. POST, May 10, 2004 at A1.

⁶⁴⁷ Interview by Steve Inskeep with Larry Wilkerson, Morning Edition, National Public Radio (Nov. 3, 2005).

⁶⁴⁸ Jordan J. Paust, *Executive Plans And Authorization to Violation International Law Concerning Treatment and Interrogation of Detainees*, 43 COLUM. J. OF TRANSNAT'L L. 811, 850 (2005) (emphasis added).

⁶⁴⁹ *Id.* at 846-848. Others told directly of the abuse include Secretary of State Colin Powell, and National Security Advisor Condoleezza Rice.

⁶⁵⁰ *Testimony on treatment of Iraqi Prisoners: Hearing before the H. Comm. on Armed Services*, 108th Cong. 2d Sess. (2004) (Statement of Secretary of Defense Rumsfeld).

⁶⁵¹ Human Rights Watch, *Getting Away With Torture: Command Responsibility for the U.S. Abuse of Detainees*, 2005 at 44-45 (emphasis added); See Jordan J. Paust, *Executive Plans And Authorization to Violation International Law Concerning Treatment and Interrogation of Detainees*, 43 COLUM. J. OF TRANSNAT'L L. 811, 846-48 (2005).

⁶⁵² Mark Mathews, *Powell Says Bush Was Informed of Red Cross Concerns*, BALT. SUN, May 12, 2004 (emphasis added).

⁶⁵³ HUMAN RIGHTS WATCH, *GETTING AWAY WITH TORTURE: COMMAND RESPONSIBILITY FOR THE U.S. ABUSE OF DETAINEES*, Apr. 2005 at 45-8, which accounts for numerous press accounts and complaints from various human rights organizations, beginning immediately after the invasion of Iraq.

⁶⁵⁴ *Id.* (emphasis added).

⁶⁵⁵ Amnesty International, *One year after Abu Ghraib, torture continues* (last modified Apr. 28, 2005), available at <<http://web.amnesty.org/pages/irq-280405-feature-eng>>.

⁶⁵⁶ AMNESTY INTERNATIONAL, *ABU GHRAIB: ONE YEAR LATER, WHO'S ACCOUNTABLE?*, available at



www.amnestyusa.org/stoptorture/agfactsheet.html.

⁶⁵⁷Human Rights First, *Torture: Quick Facts*, available at www.humanrightsfirst.org.

⁶⁵⁸Josh White, *Rights Groups Reject Prison Abuse Findings*, WASH. POST., Apr. 24, 2005 at A20.

⁶⁵⁹Amnesty International, *One year after Abu Ghraib, torture continues* (last modified Apr. 28, 2005), available at <http://web.amnesty.org/pages/irq-280405-feature-eng>.

⁶⁶⁰*Id.*

⁶⁶¹Secretary of Defense Donald Rumsfeld, Press Briefing (June 17, 2004), available at www.denfenselink.mil/transcripts (emphasis added).

⁶⁶²Eric Schmitt and Thom Shanker, *The Reach of War*, N.Y. TIMES, June 17, 2004, at A1; Dana Priest and Bradley Graham, *U.S. Struggled Over How Far to Push Tactics*, WASH. POST, June 24, 2004 at A1. Rashul may have also been interrogated in Iraq at Camp Cropper before he was transported outside Iraq.

⁶⁶³Dana Priest and Bradley Graham, *U.S. Struggled Over How Far to Push Tactics*, WASH. POST, June 24, 2004 at A1.

⁶⁶⁴Secretary of Defense Donald Rumsfeld, Press Briefing (June 17, 2004), available at www.denfenselink.mil/transcripts.

⁶⁶⁵ See Mark Fass, *Rumsfeld ID's Secret Detainee*, DAILY NEWS (New York), June 20, 2004, at 34.

⁶⁶⁶Jordan J. Paust, *Executive Plans And Authorization to Violation International Law Concerning Treatment and Interrogation of Detainees*, 43 COLUM. J. OF TRANSNAT'L L. 811, 850 (2005).

⁶⁶⁷Eric Schmitt and Thom Shanker, *The Reach of War*, N.Y. TIMES, June 17, 2004, at A1; see also Mark Fass, *Rumsfeld ID's Secret Detainee*, DAILY NEWS (New York), June 20, 2004, at 34.

⁶⁶⁸*Id.*; see also Dana Priest & Josh White, *Detainee Reportedly Was Lost in System: CIA Criticized for Hiding Some Prisoners*, WASH. POST, June 17, 2004, at A19.

⁶⁶⁹*Id.*

⁶⁷⁰John Hendren, *The Conflict in Iraq: CIA May Have Held 100 'Ghost' Prisoners*, LA TIMES, Sept. 10, 2004, at A1.

⁶⁷¹Josh White, *Army, CIA Agreed on 'Ghost' Prisoners*, WASH. POST., Mar. 11, 2005 at A16.

⁶⁷²*Testimony on the Independent Panel to Review Department of Defense Detention Operations: Hearing before the S. Comm. on Armed Services*, 108th Cong. 2d Sess. (2004) (Statement of Army Gen. Paul Kern).

⁶⁷³*Id.* (emphasis added).

